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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NOEMEE GABISAN, on behalf of herself, and on behalf of all persons similarly situated,

Plaintiff,

vs.

PELICAN PRODUCTS, INC.; and, Does 1 to 10,

Defendants.

CASE No. 08 CV 1361 JM (NLS)

PLAINTIFF'S *EX PARTE* APPLICATION FOR AN ORDER SHORTENING TIME FOR THE HEARING OF PLAINTIFF'S EMERGENCY MOTION FOR CORRECTIVE NOTICE TO MEMBERS OF PUTATIVE CLASS

Judge: Hon. Jeffrey T. Miller
Dept.: Courtroom 16, 5th Flr

Hearing Date: September 19, 2008
Hearing Time: 1:30 p.m.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff hereby applies *ex parte* for an order shortening time pursuant to Civ. L. R. 7.1(e)(5); The application is made to shorten the twenty eight (28) calendar day briefing schedule so that Plaintiff's Emergency Motion Regarding Corrective Notice to the Members of the Class, filed concurrently with the *ex parte* application for an order shortening time, may be heard twenty-two (22) days from the date of the filing of Plaintiff's Motion on September 5, 2008, with Defendant's Opposition to Plaintiff's Motion to be filed seven (7) days from the date of the filing of Plaintiff's Motion on August 21, 2008, and with Plaintiff's Reply to Defendant's Opposition to be filed four (4) days later on August 25, 2008. The hearing date is currently scheduled for September 19, 2008 at 1:30 p.m.

The expedited briefing schedule is necessary to bring the Court's attention to the Defendant's improper solicitations of individual settlements with putative class members through misleading communications. The misrepresentations being made by Defendant are creating a likelihood of abuse, confusion, and an adverse effect on the administration of justice. "Courts are concerned that such communications may prevent class members from making informed decisions about exclusion." 3 Newberg on Class Actions, "Solicitations by Defense Counsel fo Exclusions and Individual Settlements," § 15.19. To protect against misleading communications, courts may enjoin communications by defendants in order to prevent "misleading communications to class members [which]...pose a serious threat to the fairness of the litigation process." *In re Asbestos Litig.*, 842 F.2d 671, 680 (3d Cir. 1988). In order to evaluate what corrective notice should be sent to the class members before the fairness of the litigation is further adversely affected, Plaintiff respectfully submits that an order shortening time is warranted for the Court to hear Plaintiff's Motion for Corrective Notice on September 5, 2008, pursuant to the supervisory powers endowed to the Court by Fed. R. Civ. Proc. 23(d).

BLUMENTHAL & NORDREHAUG

Dated: August 14, 2008

By: *s/Norman B. Blumemthal*
Norman B. Blumenthal, Esq.

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